



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LEBANON EDUCATION ASSOCIATION, :
NEA-NEW HAMPSHIRE :
Complainant :
v. :
DANIEL J. WHITAKER, in his capacity :
as Superintendent of SAU #32, :
Lebanon, New Hampshire :
Respondent :

CASE NO. T-0240:2
DECISION NO. 83-25

APPEARANCES

Representing Lebanon Education Association,
NEA-New Hampshire
John Fessenden

Representing Daniel J. Whitaker, Superintendent
David H. Bradley, Esq.

Others in Attendance

Daniel J. Whitaker
RoseAnne Kern
S. M. Templeton
Barbara Uresky

BACKGROUND

The Lebanon Education Association requested a rehearing and a clarification of the order issued by the PELRB Decision No. 82-39 to clarify problems arising out of that decision as follows: 1) at a hearing held before the PELRB on May 27, 1982 the Lebanon Education Association alleged that the contract between the Lebanon School Board and the Lebanon Administrators Group (hereafter LAG) which granted administrators the right to "bump" teachers, violated the reduction in force clause of a prior contract between the LEA and the Lebanon School Board in violation of RSA 273-A:5 I (i). In its order of June 3, 1982, the PELRB ordered all parties signatory to the agreements namely the Lebanon Education Association, NEA-New Hampshire Lebanon Administrators (LAG) and Lebanon School District to conduct negotiations with respect to their disagreements over the language in their respective contracts dealing with the reduction in force contingencies. The LEA understood that the Lebanon School Board, the LAG and the LEA were to negotiate new language for the LAG contract that would not violate the LEA contract. The PELRB order seems to require the LEA to reopen negotiations on their own contract. The LEA's position is that the LEA contract with the Lebanon School Board is a valid contract, a bumping clause of the LAG contract with the Lebanon School Board is a violation of the reduction in force clause of the LEA contract and the LAG contract was entered into after the LEA contract and is therefore invalid under RSA 273-A:5 I (i) in

that it violates the LEA contract; and further that the PELRB does not have the authority to order the reopening of negotiations of a valid contract (therefore the PELRB's order requiring the LEA to open negotiations on its own contract is unlawful).

The School Board responds that the relief sought by the complainant has already been accomplished in that the language of the LAG contract has been modified and in addition that no one has been or will be harmed by the language that now exists in the contract between the LAG and the School Board. A rehearing of the matter was held at the Board's office in Concord, N.H. on May 24, 1983.

#### FINDINGS OF FACT AND RULINGS OF LAW

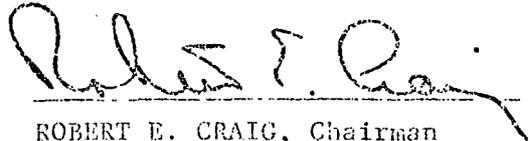
At hearing it was made apparent that the change in the LAG contract was such as to give former principals status as teachers giving them seniority based upon their service in the district regardless whether it was as teacher or principal. The fact that the principals would then revert to becoming teachers, according to the argument of the School Board, would mean that they would have the right to "bump" any teacher who was first of all on probation (that is to say nontenured) and also presumably to take priority over those teachers who even though they had tenure had less seniority than the former principal. It is this system of allowing former principals, who are now teachers, to "bump" persons who were teachers all along, that the union objects to. Indeed the School Board attorney indicated that whether or not the person had been a member of LAG, indeed whether or not there had been an LAG contract, principals reverting to their former status as teachers would still bring forth the argument from the LEA that the contract was being breached. There was some reference in the hearing to the requirements under RSA 189:14A such that persons with tenure (that is to say nonprobationary status) are required under that law to be given reasons for their termination and the School Board also argued that at some time past the term "principal/teacher" concept had also been used meaning that the Lebanon School Board's idea to have former principals revert to teacher status is in some way related to RSA 189:14A. No particular legislative history has been offered to establish this particular point.

#### DECISION

Regardless of the timing of the two contracts it is clear to the Board that there are two different units involved here, one for the administrators and one for the teachers and that should an administrator become a teacher they would enter the teacher unit and indeed should a teacher become a principal they would enter the principal unit but that no contract covers the interchange between the two units nor can a contract be agreed to between one unit which would govern the rights and privileges of the membership of the other unit. We find no substantiation in the argument that RSA 189:14A is appropriate here nor do we wish to make a ruling with respect to that law. The PELRB finds that former principals who become members of the teaching unit will have only those rights and will be covered by that contract only which applies to the teaching unit and that the LAG contract cannot apply to a principal who has given up the position as principal in order to become a teacher and that should the district wish to change the seniority system in the teacher contract or the reduction in force clause in the teacher contract they have to negotiate with the representatives of the teachers for that particular change.

This Board has recently ruled that contracts applied to the unit for which they were negotiated; that they must be approved by the unit and that they do not apply to other units; nor can members of other units vote on such contracts. In short, the LAG agreement with the School Board to provide principals (once they

stop being principals) with certain rights and privileges as teachers must be ruled by this Board to be an invalid incursion upon the rights of the teachers association to represent their unit and negotiate their contract. As a consequence this Board rules that the LAG agreement is invalid insofar as it applies to members of the teaching unit. It is the essence of collective bargaining that people will bargain collectively for their own benefits and cannot bargain for the benefits or lack thereof for other people. This Board does find then that the School Board has committed an improper practice in violation of 273-A:5 U (1) in that they have attempted to invalidate portions of the teacher contract by negotiating with the administrators certain portions of the administrators contract which would govern their behavior as teachers; this we find an invalid practice.



ROBERT E. CRAIG, Chairman

Signed this 20th day of June 1983.

By unanimous vote. Chairman Craig presiding, members Seymour Osman and Russell Verney present and voting. Also present, Evelyn C. LeBrun, Executive Director.